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SUBJECT: U.S.-VIETNAM BILATERAL WTO ACCESSION MARKET ACCESS
NEGOTIATIONS, JANUARY 16-18

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11. (SBU) Summary: Working within a theme of liberalization, linkages, and legislation, U.S. and Vietnamese negotiators made significant progress in bilateral WTO Accession market access negotiations held January 16-18 in Hanoi. In the agricultural market access negotiations, tariff lines covering the most sensitive products - beef, pork, dairy, grapes, and apples - remain. (Note: Vietnam gave China duty-free access on beef, pork, apples, and grapes under the ASEAN-China FTA. End Note.) Industrial tariff negotiators agreed on more than one-third of tariff lines on outstanding priority products in the construction equipment, energy equipment, chemicals, pharmaceuticals, paper, civil aircraft, and consumer goods sectors. Difficult negotiations lie ahead on politically-sensitive products including autos and auto parts, motorcycles, tractors, pulp, appliances, and a limited number of pharmaceutical and electronic goods. Vietnam's new offers on telecommunications, energy services, and branching for non-life insurance, and selected securities subsectors created new momentum for the services talks. Hard work remains, including on banking, the product exclusions under distribution services, "public utility" exceptions and claimed need to protect essential security interests in energy and environmental services.

12. (SBU) Traction was achieved in discussions on the following multilateral issues - trading rights, state enterprises, SPS, standards, IPR protection, subsidies, and quantitative restrictions. Vietnam provided official translations of newly enacted laws and the United States undertook to review them and provide comments on their conformity with WTO rules and obligations. In briefings on the conduct of the negotiations, the U.S. business community in Vietnam urged U.S. negotiators to secure improved commitments on market access and implementation of WTO rules and obligations. The two sides agreed that meeting again in late March would give both teams sufficient time to consult with stakeholders and develop creative approaches to complete work on the market access negotiations and to resolve remaining problems in the multilateral talks. End Summary.

13. (SBU) Stressing the theme of liberalization, linkages,

and legislation, AUSTR for WTO and Multilateral Affairs Dorothy Dwoskin led a senior trade policy team, including AUSTR for Southeast Asian and Pharmaceutical Affairs Barbara Weisel, to Vietnam January 16-18 for bilateral WTO accession market access negotiations. The U.S. and Vietnamese teams used every available minute to narrow differences on Vietnam's market access offers on agricultural tariffs, industrial tariffs, and services. On the theme of linkages, the two teams devoted considerable time to key multilateral issues including trading rights, the role of the state in the economy, subsidies, standards, sanitary and phytosanitary measures, intellectual property rights protection, and quantitative restrictions. Vietnam provided official translations of the laws enacted in November 2005 and promised to provide translations of decrees currently being drafted to implement those laws.

¶4. (SBU) Taking full advantage of their presence in Hanoi, AUSTR Dwoskin and AUSTR Weisel met with Vietnamese officials at the highest levels of government, including Deputy Prime Minister Vu Khoan, Minister of Trade Truong Dinh Tuyen, Minister of Finance Nguyen Sinh Hung, Minister of Posts and Telecommunications Do Trung Ta, and Vice Minister for Agriculture and Rural Development Bui Ba Bong, to provide impetus to the talks. In addition, the AUSTRs consulted closely with American companies present in Vietnam, twice briefing representatives of the American Chambers of Commerce in Vietnam. Responding to the intense local interest in the negotiations, AUSTRs Dwoskin and Weisel held a press conference that was attended by over 100 members of the press and other interested parties.

AGRICULTURAL MARKET ACCESS

¶5. (SBU) Good progress was made in the agriculture negotiations. U.S. negotiators held extensive consultations with stakeholders prior to the meetings to develop pragmatic

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options, and Vietnam also came prepared to negotiate. For the first time negotiations resulted in substantial movements rather than minor incremental concessions. Negotiators reached agreement on priority products such as cotton, soybean meal, nuts and processed meats and other processed food products. Only the most sensitive products remain including beef, pork, whey, grapes, apples and distilled spirits. U.S. agricultural group have repeatedly stressed that securing low duties on these commodities is particularly important given Vietnam provides zero duties to China for these products under the ASEAN-China preferential agreement. Distilled spirits will continue to be contentious as the two sides remain very far apart on tariffs and Vietnam also maintains WTO-inconsistent differential excise taxes (on spirits and beer) and limits distribution rights for wines and spirits.

¶6. (SBU) The U.S. side raised issues such as biotech, shelf life and BSE restrictions on bone-in beef and beef offals, as well as the importance of achieving proper implementation of WTO rules for Sanitary and Phytosanitary measures and Technical Barriers to Trade. In a separate meeting the Vice Minister for Agriculture committed to lifting the restrictions on beef in accordance with OIE guidelines. He also maintained that Vietnam's biotech policies would not result in restriction of trade, and that he wanted to ensure implementation of SPS upon accession. The U.S. interagency team will be working with the U.S. Embassy to pursue resolution of the biotech and BSE issues in the coming weeks.

INDUSTRIAL MARKET ACCESS

¶7. (SBU) Negotiations on industrial goods continued to make good progress. The two sides were able to agree on more than 250 tariff lines of U.S. priority products in the construction equipment, energy equipment, chemicals,

pharmaceuticals, paper, civil aircraft, and consumer goods sectors. Negotiators also agreed on textile tariffs following Vietnam's implementation of the tariff component of a bilateral textile agreement at the end of 2005. Remaining difficult issues include autos and auto parts, motorcycles, tractors, pulp, appliances, and a limited number of pharmaceutical and electronic goods. Discussions on specific product sectors were closely linked to non-tariff barriers to market access, including distribution and trading rights for pharmaceuticals, import regulations for commercially-traded toxic chemicals, and import prohibitions on large motorcycles, electronic goods containing encryption technology and remanufactured goods covered by the Information Technology Agreement. The United States has committed to further identify specific autos, auto parts, and motorcycle priorities in order to focus future discussions on these products. Vietnam will consult on further flexibility on these outstanding issues and explore possible solutions for improved market access for large motorcycles.

SERVICES

18. (SBU) Services negotiations gained new momentum during the discussions in Hanoi. Vietnam made significantly improved offers in some U.S. priority sectors, such as telecommunications, energy services and branching for non-life insurance and selected securities subsectors. In banking there were no concrete improvements in Vietnam's offer, but both sides agreed to seek a strategy focused on creating new commercial opportunities upon accession, whether through 100 percent foreign-owned subsidiaries, a more liberalized branching regime, or acquisition. The U.S. delegation also requested additional commitments in the Working Party Report (WPR) addressing certain regulatory barriers for insurance and noting Vietnam's intent to implement its financial services commitments in a manner consistent with international industry standards. Important linkages between trading rights and distribution services were also discussed in detail, and Vietnam is at least considering a U.S. request to phase out product exclusions under distribution services. Other remaining areas of concern are national security exceptions in Vietnam's offer for certain energy and environmental services, as well as broad exceptions for Vietnam's expansive definition of

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"public utilities." Both sides agree to specific follow-up work, including a proposal from the United States for additional commitments on licensing and transparency in the WPR.

MULTILATERAL ISSUES - THE RIGHT TO IMPORT AND EXPORT

19. (SBU) Vietnam has reduced the number of products subject to restrictions on the right to import and export. Most products will receive trading rights by January 1, 2007, with a limited number of products delayed until 2009, and rice delayed to 2011. Vietnam, however, has proposed limiting the right to import and export to firms that have established at least a representative in Vietnam. In addition, importation of some key products (e.g., books and printed material), would only be through a state monopoly. The United States explained why the requirement for an investment in order to import would create WTO-inconsistent restrictions on trade and increase the cost of goods in Vietnam. U.S. businesses in Vietnam provided useful estimates that trading right restrictions increased their cost of doing business in Vietnam by 10-20 percent. Vietnam's negotiator appeared to recognize the economic merits of the U.S. position, but expressed concern about accountability and meeting requirements for handling of goods in Vietnam, such as cold storage. The two sides then discussed how these concerns could be met in a WTO-consistent way. With a better understanding on Vietnam's part of how trading rights should operate, the two sides

will return to the issue as trading rights are of interest to several WTO Members. The U.S. side also emphasized the need to eliminate the import monopoly on books, printed material and audio-visual products.

MULTILATERAL ISSUES - STATE ENTERPRISES

¶10. The two sides had a useful discussion of the commitment language that the United States proposed for Vietnam's WPR. A commitment that Vietnam's state-owned and state-controlled enterprises will operate based on commercial considerations and provide U.S. firms an opportunity to compete for purchases and sales of goods and services on a non-discriminatory basis is required for the United States and Vietnam to apply the WTO between them. Vietnam had posed several questions about the specific language, focusing on which companies, purchases and sales would be covered. Although some further work remains on this section, the Vietnamese side stated that the detailed explanations made them much more comfortable with the commitment.

LEGISLATION

¶11. (SBU) Vietnam's National Assembly enacted 29 laws in 2005 related to WTO accession. The two teams made current their joint tracking chart of Vietnam's economic policy legal documents relevant to WTO accession. Vietnam also provided official translations of the most recently enacted laws and promised to provide as soon as possible translations of decrees being drafted to implement key laws - the Commercial Law, Investment Law, Unified Enterprise Law, and IPR Law. The U.S. team undertook to review the latest set of laws and provide comments, if needed, on their consistency or inconsistency with WTO rules and obligations prior to the next Working Party meeting.

AMERICAN BUSINESS COMMUNITY CONCERNS

¶12. (SBU) AUSTR Dwoskin and the U.S. negotiating team briefed over 50 U.S. company representatives at a January 17 breakfast sponsored by the American Chamber of Commerce and at a post-negotiation event before departing Vietnam on the night of January 18. After the review of the status of and U.S. goals for the negotiations, business leaders identified some of the problems they face in Vietnam and some of the specific objectives they would like to see achieved during the negotiations. Insurance executives noted that they are currently barred from selling their products to state-owned enterprises and Vietnamese individuals and from selling mandatory insurance. They stressed their desire for Vietnam to make a branching commitment in its services market access schedule. The representative of a major U.S. bank emphasized that banks need to be able to establish 100

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percent-owned subsidiaries in Vietnam, sub-branches, and to take unlimited deposits in Vietnamese Dong. Pharmaceutical companies noted that their market access is severely restricted and asked that we seek full trading rights and broad distribution commitments in Vietnam's services schedule. Consumer products manufacturers echoed this request. Telecommunications companies asked us to obtain more liberal market access terms and another communications giant cited widespread cable piracy in Vietnam to stress the importance of ensuring that Vietnam has a TRIPS-consistent IPR regime prior to accession. Representatives also sought updates on the status of our discussions on subsidies and information about USG intentions regarding the possibility of requesting a textile special safeguard.

PRESS CONFERENCE

¶13. (U) Nearly 100 reporters, photographers, and local television cameras attended AUSTRs Dwoskin's and Weisel's press conference at the Hilton Hotel. After reading a prepared statement, AUSTR Dwoskin answered a series of

informed and incisive questions on the process and substance of the negotiations. AUSTR Dwoskin refuted allegations that the United States is demanding WTO plus commitments from Vietnam and giving higher priority to the Russian and Ukrainian accessions. She also responded to questions about the role of Congress in the accession process and the necessity for a PNTR vote before Vietnam's accession protocol can be approved by the WTO.

NEXT STEPS

¶14. (SBU) In the closing plenary session, team leaders agreed that our discussions had been very productive, narrowing differences in all areas. Both sides agreed that a meeting in the second half of March, when a Working Party meeting is likely, would give both teams sufficient time to consult with stakeholders and develop creative approaches to complete work on the market access negotiations and to resolve remaining problems in the multilateral talks. (Note: The WTO Secretariat has not set a date for the next Working Party meeting. End Note.) On multilateral issues, Vietnam pledged to submit its updated subsidies notification within two weeks and to provide draft implementing decrees as they are translated. The United States undertook to review the official translations of Vietnam's recently enacted legislation and provide comments to help shape the discussion at the next Working Party meeting.

MARINE